IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4749 of 1984

Date of decision: 10-1-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HEIRS OF MATHURBHAI JAGABHAI

Versus

MOHANBHAI MOTIBHAI

Appearance:

MR JITENDRA M PATEL for Petitioners

MR GR SHAIKH for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/01/97

ORAL JUDGEMENT

This writ petition has arisen out of the proceedings initiated by the petitioner under section

70(b) of the Bomaby Tenancy and Agricultural Lands Act, 1948. The land in dispute is of survey No.779 admeasuring 2 acres 6 gunthas situate in the sim of village Jinaj, Taluka Khambath, District Kheda. The land originally was possessed by Panjrapole Trust. In 1965 the Mamlatdar had initiated suo motu proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Act' for short). The petitioner has come up with the case that in those proceedings respondent herein made statement that he is not cultivating the land as a farmer. He further admitted that as he looked after the said land, his name is shown as a farmer. On the basis of the said statement of the respondent, the Mamlatdar has dropped the proceedings initiated by him under section 32G of the Act, vide order dated 12th March, 1965. The petitioner initiated proceedings under section 70(b) of the Act by filing application before the Mamlatdar and A.L.T. on 4-7-1980. The Mamlatdar decided the matter in favour of the petitioner vide his order dated 15-9-1981. The petitioner was declared to be a tenant in the disputed land. The respondent felt aggrieved by the aforesaid decision of the Mamlatdar filed appeal before the Deputy Collector. The appeal of the respondent came to be dismissed by the Deputy Collector under order dated 29th January, 1983. The respondent has then taken the matter before the Gujarat Revenue Tribunal by filing revision application which came to be allowed under order dated 17th August, 1983. Hence this special civil application.

2. The learned counsel for the petitioner contended that the Gujarat Revenue Tribunal has committed serious error of jurisdiction in holding that the application filed by the petitioner under section 70(b) of the Act was barred by limitation. Relying on the decision of this court in the case of D. S. Patel vs. B.P.Patel reported in 1994(2) GLR 1647, counsel for the petitioner contended that no limitation is prescribed for filing application by a tenant under section 70(b) of the Act. It has next been contended that the Tribunal has very limited power of judicial review under its revisional power. The Tribunal has gone to the extent of appreciating evidence which was not within the competence of the Tribunal. Mr. G.R. Shaikh, counsel for the respondent contended that the view which has been taken by this court in the case of D.S. Patel (supra) is not the correct view. While deciding that matter this court has not taken into consideration the earlier decisions of this Court as well as the Bombay High Court. So far as the other ground is concerned, learned counsel for the respondent contended that the Tribunal has rightly

interfered in the matter as the lower authority had excluded the documentary evidence of the respondent.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In the case of D.S.Patel (supra) this court has taken the view that the limitation prescribed for filing application before the Mamlatdar under the Mamlatdar's Court Act is not applicable to the application filed before him under section 70(b) of the Act. In view of the aforesaid decision of this Court, the judgment of the Tribunal, to the extent it held that the application of the petitioner was barred by limitation, cannot be allowed to stand. However, the counsel for the petitioner has drawn the attention of this court to the aforesaid decisions of the Bombay High Court as well as this court and contended that those two decisions were also in connection with the same controversy with reference to section 70(1) of the Act, but in both the cases there was no issue whether any limitation is prescribed for filing application under section 70(b) of the Act. In those cases the matter was altogether different. In one case the parties proceeded on the assumption that limitation is prescribed for filing the application under section 70(b) of the Act, and in the other case there was question, once the application under section 70(b) of the Act is dismissed as having been abated, whether second petition on the same facts lies or not. So it is not correct to say that the decision of this court in the case of D.S.Patel (supra) is not correct decision as the two earlier decisions were not considered. The matter in issue in the case of D.S.Patel (supra) before this court was directly on the question whether the limitation prescribed for filing application before the Mamlatdar under the Mamlatdar's Courts Act is applicable to the application to be filed under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948. I am in full agreement with the view taken by this court in the case of D.S.Patel (supra).

4. Another ground given by the Tribunal for acceptance of the revision application is equally erroneous on the face of it. The Tribunal has proceeded as if the petitioner has not produced any documentary evidence. The petitioner has come up with the case that he is a tenant and to prove the relationship of tenant and landlord it is not necessary that only documentary evidence of the Government should be there. This is a question of fact which has to be proved by producing evidence, may be documentary or oral or documentary as well as oral. The Tribunal fell in error in holding that

the evidence of the petitioner which is only oral should not have been accepted, where the respondent has produced documentary evidence from Government record. There is yet another order in the order of the Tribunal. In the proceedings the petitioner produced affidavit of Kasturchand Nagindas in the evidence. The Tribunal has decided the matter as if the Mamlatdar has relied upon the affidavit of Kasturchand Nagindas only. Said Kasturchand Nagindas has also been examined in the proceedings before the Mamlatdar. He was also cross examined by the respondent. So it is not the case where only the affidavit of Kasturchand Nagindas was there, but the statement recorded by the authority was also there.

5. Both the parties have produced evidence in support of their respective cases. It is for the authorities to decide which evidence is to be accepted. The Mamlatdar has appreciated the evidence and thereafter he reached the conclusion that the petitioner is correct in his stand and he was declared to be the tenant. The Tribunal, sitting under revisional power, interfered only on the ground that in its view documentary evidence should have been given weightage. This is absolutely erroneous approach. This error in the judgment is grave and apparent and can not be allowed to stand.

6. In the result this special civil application succeeds and the same is allowed. The order of the Gujarat Revenue Tribunal dated 17-8-1983 passed in Revision Application No.226 of 1983is quashed and set aside and the matter is remanded to the Tribunal to decide the same afresh on merits in accordance with law. Both the petitioners and respondents are directed to present themselves before the Tribunal on 3-3-1997. The Tribunal shall decide the matter within four months, as it is an old matter, without waiting for writ of this court. It shall be open either to the petitioners or the respondents to produce a copy of this order before the Tribunal on the aforesaid date. Rule made absolute in the aforesaid terms, with no order as to costs.

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